



**THE COMMONWEALTH OF MASSACHUSETTS**

**Appellate Tax Board**

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**Docket No. X308755**

**LAUREN E. COHEN & BARBARA G. NELSON**  
**Appellant.**

**v.**

**BOARD OF ASSESSORS OF THE  
CITY OF NEW BEDFORD**

**Appellee.**

**DECISION WITH FINDINGS**

The assessors' Motion to Dismiss ("Motion") is allowed and the appeal is dismissed for lack of jurisdiction. On the basis of the documents submitted in support of and in opposition to the Motion, and the arguments advanced at the October 24, 2019 hearing of the Motion, the Board finds and rules as follows.

This appeal concerns the fiscal year 2019 assessment of real estate tax in the amount of \$8,642.14 on property located at 242 Plymouth Street in New Bedford ("subject property"). The assessors produced payment records from the Treasurer's office showing that the first quarter bill in the amount of \$1,490.55, due on August 1, 2019, was not paid until September 7, 2019. The payment records reflect that interest in the amount of \$21.16 was incurred due to the late payment and that the September 7, 2019 payment of \$1,511.71 included the interest charge.

In response, the appellant argued that he received a bill in the name of the seller of the subject property showing a total due of \$0.00. At the request of the hearing officer, the appellant produced a copy of the bill showing \$0.00 due and a copy of a settlement sheet prepared in connection with the appellant's purchase of the subject property on September 6, 2018. The settlement sheet shows that the appellant paid to the seller at the closing a total of \$408.37 representing the proportionate amount of real estate tax due on the first quarter tax bill from the date of the closing - - September 6, 2018 - - through the end of the first quarter, September 30, 2018.

On the seller's side of the settlement sheet, the seller's payment obligations include the full \$1,511.71 due on the first quarter bill, which includes tax in the amount of \$1,490.55 plus \$21.16 in interest.<sup>1</sup> Accordingly, the settlement sheet and the Treasurer's tax payment records show that there was a fiscal year 2019 first-quarter payment due

<sup>1</sup> The settlement sheet also reflects a September 7, 2018 payment of the fourth-quarter fiscal 2018 bill, which is consistent with the Treasurer's payments records, plus \$507.47 in water and sewer charges. These payments reflect that the seller was paying the outstanding real estate tax and municipal charges due as of the date of the closing.

and that it was paid from the seller's funds on the day after the closing. That payment was late and included interest.

On the basis of this evidence, the Board finds that there was an outstanding tax obligation for the first quarter of fiscal year 2019 that was adjusted for at the closing and paid from the seller's funds on the day after the closing. Because the payment was late, interest was incurred.

The Board has no jurisdiction over an appeal when: (1) the tax due for the fiscal year exceeds \$5,000; (2) interest is incurred on the tax bill; and (3) the three-year average provision under G.L. c. 59, §§ 64 and 65 is not met. See, e.g. **Massachusetts Inst. Of Tech. v. Assessors of Cambridge**, 422 Mass. 337, 451-52 (1996); **Columbia Pontiac Co. v. Assessors of Boston**, 395 Mass. 1010, 1011 (1985) ("payment of the full amount of the tax due without incurring interest charges is a condition precedent to the board's jurisdiction over an abatement appeal.").

In the present appeal, the tax on the subject property exceeds \$5,000, interest was incurred due to the late payment of the first-quarter bill, and the appellant failed to satisfy the three-year average provision of G.L. c. 59, §§ 64 and 65.

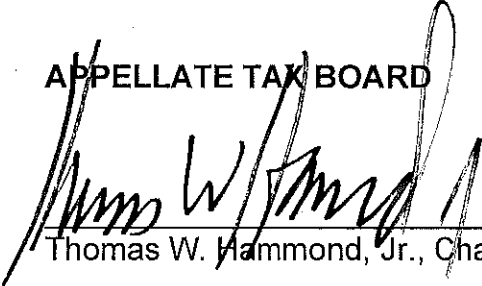
The Board has only that jurisdiction conferred on it by statute. **Stilson v. Assessors of Gloucester**, 385 Mass. 724, 732 (1982). Adherence to the statutory prerequisites is essential "to prosecution of appeal from refusals to abate taxes." **New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth**, 368 Mass. 745, 747 (1975). **Old Colony R. Co. v. Assessors of Quincy**, 305 Mass. 509, 511-12 (1940). The Board cannot waive its jurisdictional requirements. *Id.*

Accordingly, the Motion is allowed, and the appeal is dismissed for lack of jurisdiction. This is a single-member Decision promulgated in accordance with G.L. c. 58A, § 1A and 831 CMR 1.20.

ORDERED ACCORDINGLY

APPELLATE TAX BOARD

By:

  
Thomas W. Hammond, Jr., Chairman

Attest:

  
Clerk of the Board

Date:

(Seal)

NOV 14 2019

**NOTICE:** Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.